IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

WP(C).No. 33586 of 2007(W)

PETITIONERS:

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1. G.SUNIL, SAROJINI NIVAS,
   PUNNATHANATHU MURI, VILAPPILSALA,
   NEYYATTINKARA TALUK.

2. RAJALAKSHMI,
   SAROJINI NIVAS,
   PUNNATHANATHU MURI, VILAPPILSALA,
   NEYYATTINKARA TALUK.

BY ADV. SRI.S.MOHAMMED AL RAFI

RESPONDENTS:

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1. VILAPPIL GRAMA PANCHAYATH,
   REPRESENTED BY ITS SECRETARY,
   PEYAD P.O., THIRUVANANTHAPURAM-695573.

2. DISTRICT COLLECTOR,
   THIRUVANANTHAPURAM.

3. STATE OF KERALA, REPRESENTED BY
   SECRETARY, LOCAL SELF GOVERNMENT DEPARTMENT,
   SECRETARIAT, THIRUVANANTHAPURAM.

BY ADV. SRI.LEO GEORGE FOR R1
G.P.SRI.K.J.MOHAMMED ANZAR FOR R2 & R3

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Pius C. Kuriakose, J.

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W.P.(C) No. 33586 of 2007

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Dated this the 14th day of December, 2007

JUDGMENT

Ext.P3 order rejecting the petitioner's application for a building permit for construction of a residential building is under challenge. It is submitted on behalf of the Panchayat that the issue is pending before the Ombudsman. But, as rightly submitted by the learned counsel for the petitioner the Ombudsman may not have power to set aside Ext.P3, which is an order rejecting an application for permit. The reasons stated in Ext.P3 for rejecting the petitioner's permit application is that steps have been taken for acquisition of the plot, upon which the petitioner proposes to construct the building, for expansion of a Primary Health Centre. Obviously, no notification under section 4(1) of the Land Acquisition Act has been published for acquisition of any portion of the petitioners' property and the principles laid down in a decision reported in Padmini V. State of Kerala (1999(3) KLT 485) and a decision of the Apex Court reported in Raju S. Jethmalani V. State of Maharashtra (2005)11 SCC 222) should govern.

2. Accordingly, I dispose of the writ petition issuing the following directions:-

1) Petitioners are directed to file a joint affidavit on stamp paper of appropriate value before the Secretary of the Panchayat stating clearly that in the event of any notification under section 4(1) of the Land Acquisition Act being promulgated for the acquisition of any portion of their property for any public purpose within one year from today, claimants will not be entitled to any compensation for the building to be put up on the basis of the permit.

2) Once the Panchyat notices the above affidavit, the panchayat will re-consider Ext.P2 and grant approval the plan and issue permit provided the plan is otherwise in order. In other words, the proposal for acquiring portion of the property shall not be a ground for rejecting the permit.

3) Orders as directed above shall be passed by the Panchayat as early as possible, at any rate within one months of petitioner filing the affidavit, as directed above.

3. In order to enable the Panchayat to comply with this order, Ext.P3 is quashed.

Pius C. Kuriakose,
Judge.

mn.